

duplicates) to serve 24 notices of subpoena.¹ After comparing the filed notices and removing duplicates, WSOU wrote to Dell on June 3, 2021, listing the subpoenas and asking that Dell confirm the list was accurate. Dell did not respond. In objections served by Mr. Tucker on June 10, 2021, Mr. Tucker explained that he has no responsive documents other than: (1) privileged attorney-client communications; and (2) copies of documents obtained from the Public PAIR. Following service of the objections, Dell made no effort to reach out to Mr. Tucker's counsel.

On June 14, 2021, WSOU followed up again, asking that Dell confirm that (1) the list of subpoenas in WSOU's June 3, 2021 email was accurate and (2) to the extent any depositions go forward, it would cooperate on scheduling to ensure that all parties are able to attend each deposition. Dell did not respond. On June 22, 2021, counsel for WSOU and Mr. Tucker followed up with Dell again by phone and by email, requesting that Dell withdraw its subpoenas or extend the deadline to comply or move to quash. Dell finally responded and confirmed that it would not move forward with any depositions on June 25, but Dell refused to withdraw its subpoenas.

ARGUMENT AND AUTHORITIES

Under Rule 45, a subpoena must command each person to whom it is directed to attend and testify "at a specified time and place." Fed. R. Civ. P. 45 (a)(1)(A)(iii). A subpoena that commands a non-party to attend a deposition must state a place of compliance that is "within 100 miles of where the person resides, is employed, or regularly transacts business in person." Fed. R. Civ. P. 45 (c)(iii). "On timely motion, the court for the district where compliance is required must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3).

¹ Most of the subpoenas are issued in more than one of the cases captioned above. This, combined with Dell's curious decision to serve the notices of subpoena by ECF rather than by email, resulted in the service of 33 duplicates. Because the documents filed by ECF did not contain the name of the non-party in the file, it was necessary to manually sift through Dell's subpoenas to remove duplicates.

Here, all of Dell's subpoenas fail to specify a time and place for the deposition. Each subpoena lists "Location of deposition to be determined" and states "06/25/2021 9:00 a.m." as the date and time of the deposition. Further, because the subpoenas contain neither a location nor a time zone, it is impossible to determine from the face of the deposition where or when a witness should appear. Further, because the subpoenas do not specify a place, they fail to comply with Rule 45(c) by commanding attendance at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person.

These defects, alone, render Dells subpoenas unenforceable. Further, Dell's subpoenas should be stricken or quashed because they are overly broad and unduly burdensome. For example, Mr. Tucker drafted the '435 patent as outside counsel for Alcatel *eighteen years ago*, in 2003. He has no recollection of any information responsive to the topics in Dell's subpoena and has no documents other than (1) privileged attorney-client communications; and (2) copies of documents obtained from the Public PAIR. He should not be burdened with a deposition, which will only waste his and the parties' time.

For the foregoing reasons, WSOU and the William J. Tucker respectfully request that the subpoena against Mr. Tucker be stricken or quashed pursuant to Rules 26 and 45.

Dated: June 25, 2021

Respectfully submitted,

/s/ Travis Richins

James L. Etheridge
Texas State Bar No. 24059147
Ryan S. Loveless
Texas State Bar No. 24036997
Brett A. Mangrum
Texas State Bar No. 24065671
Travis Lee Richins
Texas State Bar No. 24061296
ETHERIDGE LAW GROUP, PLLC
2600 E. Southlake Blvd., Suite 120 / 324
Southlake, Texas 76092
Telephone: (817) 470-7249
Facsimile: (817) 887-5950
Jim@EtheridgeLaw.com
Ryan@EtheridgeLaw.com
Brett@EtheridgeLaw.com
Travis@EtheridgeLaw.com

Mark D. Siegmund
State Bar No. 24117055
mark@waltfairpllc.com
Law Firm of Walt, Fair PLLC.
1508 North Valley Mills Drive
Waco, Texas 76710
Telephone: (254) 772-6400
Facsimile: (254) 772-6432

**ATTORNEYS FOR WSOU AND NON-PARTY
WILLIAM J. TUCKER**

CERTIFICATE OF SERVICE

I certify that on June 25, 2021 the foregoing document was served upon all counsel of record via the court's electronic filing system in accordance with the Federal Rules of Civil Procedure.

/s/ Travis Lee Richins

Tavis Richins

CERTIFICATE OF CONFERENCE

I certify that counsel for WSOU and Mr. Tucker, conferred with WSOU by phone and email on June 22, 2021. Dell opposes the relief requested in this motion.

/s/ Travis Lee Richins

Tavis Richins